

# EXHIBIT I

## Deposition of Craig Cunningham

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

CRAIG CUNNINGHAM, ROBERT	)	Videotaped
HOSSFELD and ANDREW	)	Deposition of:
PERRONG, on behalf of	)	
themselves and others	)	CRAIG CUNNINGHAM
similarly situated,	)	
	)	
Plaintiffs,	)	2:19-cv-00568
	)	
vs.	)	Judge David B.
	)	Barlow
	)	
VIVINT, INC., and DSI	)	
DISTRIBUTING, INC., dba DSI	)	Magistrate Judge
SYSTEMS,	)	Cecilia M. Romero
	)	
Defendants.	)	

June 8, 2021 \* 9:34 a.m.

Deposition by Zoom

Reporter: Lisa Bernardo, CSR, RPR

Videographer: Ryan Reverman

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ALSO PRESENT:

Andrew Perrong  
Bob Popovich  
Meredith Foreman

1 Q. Do you record conversations that don't  
2 have anything to do with telemarketing?

3 A. I'm sure I do, yes.

4 Q. What kinds of conversations are those?

5 A. It's like I said, anyone who is not in my  
6 phone book. So if it is, say, someone could be a  
7 wrong number, it could be a new friend I met and I  
8 didn't save the number. Just anyone who is not saved  
9 in my phone book.

10 Q. Do you disclose to the other person on the  
11 other line that you are recording those calls?

12 A. Generally not.

13 Q. Why not?

14 A. In Texas it's a one-party state, which  
15 means only one person has to -- I'm sorry. Only one  
16 person who is a party to the conversation needs to be  
17 aware of it, so I don't feel the need to do it.

18 Q. What is the law as you know in  
19 North Carolina?

20 A. North Carolina is also a one-party state.

21 Q. And is it, to the extent you know, is it  
22 -- is the law applicable to where the recording is  
23 being made or where the party that is being recorded  
24 is located?

25 MR. PARONICH: Object to form. You may

1 answer.

2 THE WITNESS: To my knowledge, it's where  
3 the recording is being made.

4 Q. (By Ms. Perkins) How do you know this  
5 information?

6 A. I've read up on it and that's my  
7 conclusion.

8 Q. Did you research it before you started  
9 recording these types of calls?

10 A. Yes.

11 Q. Why?

12 A. Because I don't like to break the law or  
13 infringe on other people's rights.

14 Q. Are there any telephone calls that you  
15 received directly from Vivint, Inc., that are part of  
16 this lawsuit?

17 A. Yes.

18 Q. And when were those telephone calls made?

19 A. Those were made after the accounts were  
20 created with Vivint. They're usually to set up the  
21 installation dates and times.

22 Q. Were those -- do you consider those to be  
23 telemarketing calls?

24 A. No. I don't think so. Those are  
25 actionable calls.

1 Q. Are there any actionable calls made  
2 directly by Vivint, Inc., that you are seeking  
3 recovery for in this lawsuit?

4 A. No.

5 Q. Are there any text messages made by  
6 Vivint, Inc., to you that you are seeking recovery  
7 for in this lawsuit?

8 A. No.

9 Q. Now, we were talking about the in-house  
10 counsel at Vivint that you spoke to.

11 A. Yes.

12 Q. When did you speak to him, approximately?

13 A. There were several series of conversations  
14 and communications we had. This would be, generally  
15 speaking, 2018 and 2019.

16 Q. And is it fair to assume that you believe  
17 you were receiving calls either for Vivint or on  
18 behalf -- either from Vivint or on behalf of Vivint  
19 sometime before 2018, and that's what precipitated  
20 your conversations with Vivint's in-house counsel?

21 A. Yes.

22 Q. And what phone number were you receiving  
23 calls on?

24

[REDACTED]

25 Q. Any other phone numbers?

1 A. I don't think so.

2 Q. Besides Vivint, Inc., and DSI, are you  
3 planning to add any other defendants to this lawsuit?

4 A. No.

5 Q. Are you planning to bring in any other  
6 named plaintiffs in this lawsuit?

7 A. No.

8 Q. Tell me, without breaking any attorney-  
9 client confidences, how you became and learned of  
10 this lawsuit?

11 MR. PARONICH: Objection. You can answer  
12 that.

13 THE WITNESS: Yeah. I'm not sure I  
14 understand the question.

15 Q. (By Ms. Perkins) Okay. When did you  
16 learn that this lawsuit existed?

17 A. Well, I talked to Anthony. I mean, my  
18 attorney filed the case on my behalf and I was aware  
19 of what he was doing and he was filing the case on my  
20 behalf.

21 Q. But you weren't one of the original named  
22 plaintiffs; is that right?

23 A. I believe I was. I'm sorry. Correction.  
24 It was just Andrew at the time, first for the  
25 original Complaint. I did not. Yeah.

1 Q. When did you join this lawsuit?

2 A. That was in the Amended Complaint. Yes,  
3 the Amended Complaint, document 24.

4 Q. Have you ever had a situation before where  
5 you joined in a complaint after the original  
6 complaint was filed?

7 A. Yes.

8 Q. What cases were those?

9 A. There was one against Lexington Law and  
10 that wound up being -- there were several cases filed  
11 that got consolidated. That's one that jumps out of  
12 my head. Lexington Law.

13 Q. So you would agree with me now, after -- I  
14 should ask you, what did you review just now to  
15 determine that you weren't originally named a  
16 plaintiff in this lawsuit?

17 A. I looked at PACER.

18 Q. Do you have a PACER account?

19 A. I do.

20 Q. And how long have you had a PACER account  
21 for?

22 A. Several years. At least five years.

23 Q. Do you file things with PACER?

24 A. Generally not. I have done it a few times  
25 several years ago, but, generally, I don't have a



1 TCPA filing account.

2 Q. What do you use PACER for?

3 A. Just to review the cases, look at  
4 documents and stay up with the current happenings.

5 Q. How often do you go on PACER?

6 A. Three, four times a week.

7 Q. And do you check your lawsuits or other  
8 things on PACER?

9 A. Sometimes my lawsuits, sometimes other  
10 people. Sometimes it's just research.

11 Q. How do you search your cases on PACER?  
12 Walk me through what you do on PACER.

13 A. So they have a search function where you  
14 can look via party name and so I just usually put my  
15 name in and search that way.

16 Q. Do you ever have any other Craig  
17 Cunninghams come up that aren't you?

18 A. Sure.

19 Q. And do you pay a per month service for  
20 using PACER?

21 A. It's not a per month service. To my  
22 knowledge, it's per page viewed. There may be a  
23 minimum charge, but, as I recall, it's per page  
24 viewed.

25 Q. So every time you click on a document and

1 want to open it up, you are charged from PACER for  
2 it?

3 A. Correct.

4 Q. And how do you pay your PACER bills?

5 A. I pay with a credit card.

6 Q. Which credit card is that?

7 A. Usually, again, whichever one is closest  
8 to me. Just a personal credit card.

9 Q. Do you not have it on automatic?

10 A. No. But that's probably -- I don't recall  
11 seeing that option, but I just pay the bill when its  
12 due.

13 Q. And are you charged each time you open up  
14 the document, or are you given a bill at the end of  
15 the month or the end of the week?

16 A. It's usually at the end of the month when  
17 a bill is generated.

18 Q. What was your bill last month for PACER?

19 A. It's like \$100, 120. Something like that.

20 Q. Is that average how much you spend on  
21 PACER each month?

22 A. It really varies. That might be a little  
23 bit lower than average. Maybe it's 200.

24 Q. Do you have copies of the documents that  
25 were filed on your behalf without looking in PACER?

1 A. You're referring to this case?

2 Q. In this case, sir.

3 A. Yes.

4 Q. Understood. So as we just established,  
5 you were not originally a named plaintiff in this  
6 lawsuit. How did you learn about this lawsuit?

7 A. I don't recall. I mean, it was a search  
8 in PACER to what -- to see if -- as I've said, I had  
9 previous complaints against Vivint for unwanted  
10 telemarketing calls, but I think I just looked at  
11 PACER.

12 Q. And did you discover the lawsuit on your  
13 own behalf or did somebody tell you about the  
14 lawsuit?

15 A. I remember -- I don't recall when or how I  
16 learned about it, but I believe I looked at PACER and  
17 saw a new case.

18 Q. At the time you saw it, did you recognize  
19 the named plaintiff's name?

20 A. I did.

21 Q. And did you reach out to Mr. Perrong about  
22 this lawsuit?

23 A. I have discussed the lawsuit with Andrew,  
24 yes.

25 Q. Prior to becoming a named plaintiff -- and

1 I'm not asking what you discussed with him, I'm  
2 asking you if you reached out to him about this  
3 lawsuit?

4 A. I don't recall specifically reaching out  
5 to him about it. I'm sure we talked about it. As I  
6 said, Andrew and I talk several times a week.

7 Q. When did you decide that you were going to  
8 become a party in this litigation?

9 A. It was around the time the Complaint was  
10 amended.

11 Q. For the first time?

12 A. Yes.

13 Q. And have you ever sued Vivint in court  
14 before?

15 A. No. I don't think I ever actually sued  
16 Vivint in court.

17 Q. And at the time that you -- let me scratch  
18 that. When did you learn this case was a class  
19 action?

20 A. Oh, I knew when I read the Complaint.

21 Q. And what is your understanding, if any, of  
22 what a class action is?

23 A. A class action is a way of resolving  
24 multiple claims, most are similar -- sorry. A class  
25 action is a way of resolving multiple similar cases

1 as opposed to filing multiple individual actions and,  
2 say, it is for the benefit of the class and people  
3 who received similar calls.

4 Q. And do you know where this -- what court  
5 this case was filed in?

6 A. Yes. It's in Utah.

7 Q. And do you know why it was filed in Utah?

8 MR. PARONICH: Hold on, Craig. I just  
9 have to object with respect to any specific  
10 conversations we had in reviewing those. But subject  
11 to that limitation, you can answer that.

12 Q. (By Ms. Perkins) Obviously, the case was  
13 filed before you had an attorney-client relationship  
14 about this case, I would assume. So I'm just asking  
15 you if you know why it was filed in Utah? You can  
16 say yes or no. I'm not asking for any communications  
17 you had with Mr. Perrong about it.

18 MR. PARONICH: Hold on. I just want to  
19 clarify and make sure I have a well-founded  
20 objection. Jenny, do you mean originally why it was  
21 filed in Utah?

22 MS. PERKINS: Yes.

23 MR. PARONICH: Well, then I apologize. I  
24 misunderstood. I don't have any objection to that.  
25 You should answer, Craig.

1 THE WITNESS: Okay. Can you repeat the  
2 question one more time?

3 Q. (By Ms. Perkins) Sure. Do you know why  
4 this case was originally filed in Utah?

5 A. Generally speaking, it's my understanding  
6 you need to file the case where the damages happened  
7 or where the defendant resides, and it is my  
8 understanding that Vivint is headquartered in Utah.

9 Q. So the cases that we talked about that you  
10 filed in Texas in either state court or small claims  
11 court, were the defendants -- did they reside in  
12 Texas?

13 A. Some of them did. Some of them didn't.  
14 But it also could be argued that some of the damages  
15 occurred in Texas as that's where the calls were  
16 received.

17 Q. Okay. Have you ever filed -- apart from  
18 this case, have you ever filed a lawsuit in the  
19 district of Utah before?

20 A. I think, yeah, I've had a few cases that  
21 were filed there.

22 Q. Do you know if you have any open cases in  
23 Utah right now?

24 A. I think there's one against a CBD company.  
25 The name of them escapes me right now, but I think

1 it's generally a CBD product that was being sold.

2 Q. And what is your role, to the extent you  
3 know, in this litigation?

4 A. Well, I'm a lead plaintiff in this case.

5 Q. How does your role at all differentiate  
6 with Mr. Perrong's role in this case?

7 A. He's is also a lead plaintiff.

8 Q. Do you have any distinct roles in this  
9 litigation, that you know of?

10 A. I'm not sure I understand the question as  
11 far as a distinct role versus mine versus his.

12 Q. Sure. Are you aware of any duties or  
13 obligations that you have in this case that  
14 Mr. Perrong does not have?

15 A. I think we have the same roles as lead  
16 plaintiffs.

17 Q. And who is the other named plaintiff in  
18 this lawsuit?

19 A. Yes. It's Robert Hossfeld.  
20 H-o-s-s-f-e-l-d.

21 Q. Have you ever met Robert before this  
22 lawsuit?

23 A. No.

24 Q. Have you ever spoken to him before this  
25 lawsuit?

1 A. No.

2 Q. Ever been named plaintiffs with him  
3 before?

4 A. I don't think so. No.

5 Q. You said Mr. Perrong is another plaintiff  
6 in this litigation. Have you spoken to him about  
7 this case outside the presence of Mr. Paronich?

8 A. We may have.

9 Q. What did you talk to him about?

10 A. As I recall, I think I just asked if he's  
11 suing Vivint and to confirm it's the same Vivint that  
12 I dealt with before.

13 Q. Have you ever spoken to him about just DSI  
14 or Vivint in general?

15 A. No. I don't -- I don't recall doing that.

16 Q. And you have spoken to him on many  
17 occasions before, just generally about the Telephone  
18 Consumer Protection Act?

19 A. You asked kind of two questions there, a  
20 general and a specific one.

21 Q. Have you in the past spoken to Mr. Perrong  
22 about -- in general, about the TCPA, not a specific  
23 case, but in general about the TCPA?

24 A. Yes. I have discussed the TCPA with  
25 Andrew before.



1 Q. And what did you discuss?

2 A. I don't really recall. Usually it's -- if  
3 he's, you know, familiar with the defendant, maybe he  
4 sued someone before.

5 Q. Do you know how many TCPA cases  
6 Mr. Perrong has filed?

7 A. No, I don't.

8 Q. Do you know if you have filed more than  
9 him?

10 A. I believe I have.

11 Q. Was that from, like, a PACER search?

12 A. Yes.

13 Q. Do you know why Mr. Perrong is here today  
14 attending your deposition?

15 A. I'm not sure I understand the question.

16 Q. Do you know why Mr. Perrong is attending  
17 your deposition today?

18 A. I can testify as far as me, but he's aware  
19 of the case and the deposition and he wanted to  
20 attend, is my best estimate of it.

21 Q. When did you learn he was going to be  
22 attending today's deposition?

23 A. Friday, I think. Friday or Saturday.

24 Q. What is Jared Berrett's role in this case?

25 A. He's an attorney.

1 Q. Is he your attorney?

2 A. Yes.

3 MR. PARONICH: I'm sorry, Jenny. Do you  
4 mean Jared Pearson?

5 MS. PERKINS: No. I mean Jared Barrett.

6 MR. PARONICH: My apologies.

7 Q. (By Ms. Perkins) So Jared Barrett is one  
8 of your attorneys in this case?

9 A. Yes.

10 Q. What is Mr. Hossfeld's role in this case?

11 A. He's also lead plaintiff.

12 Q. And why isn't he here today for the  
13 deposition?

14 A. I can't speak about other people's  
15 schedules and so forth. My best guess is he isn't  
16 here because he didn't want to attend.

17 Q. Do you know if he knows the deposition is  
18 occurring right now?

19 A. I can't testify to other people's  
20 knowledge and information.

21 Q. Did you communicate to him that you were  
22 sitting for a deposition today for the Vivint case?

23 A. No.

24 Q. Have you spoken to Mr. Hossfeld about this  
25 case?

1 A. No.

2 Q. Have you spoken to Mr. Hossfeld at all  
3 about any subject?

4 A. No.

5 Q. Have you ever met him?

6 A. No.

7 Q. Have you heard about him before becoming  
8 involved in this lawsuit?

9 A. No.

10 Q. Have you spoken to Mark Fitzhenry about  
11 this lawsuit?

12 A. No.

13 Q. Do you know who Mark Fitzhenry is?

14 A. Yes.

15 Q. Have you ever spoken to him before?

16 A. Yes.

17 Q. What did you speak to him about?

18 A. We've talked about real estate. We've  
19 talked about South Carolina. We've talked about some  
20 of his family and just keeping in touch with him.

21 Q. How do you know him?

22 A. I know he's a TCPA -- I know he's filed  
23 TCPA cases, generally consider him a friend.

24 Q. And when did you meet him?

25 A. I've never actually met Mark in person.

1 Q. When did you become acquainted with him?

2 A. I would say several years ago. Two or  
3 three years ago.

4 Q. Who made the initial contact?

5 A. I don't recall. My best guess is I  
6 reached out to him and called him.

7 Q. Is he somebody that you would have  
8 programmed in your cell phone number -- in your cell  
9 phone?

10 A. He is.

11 Q. How often do you speak to Mr. Fitzhenry?

12 A. Every few months.

13 Q. When is the last time you spoke to him?

14 A. I don't recall the exact date.

15 Q. Ever speak to him about Vivint?

16 A. Not to my knowledge, no.

17 Q. Ever speak to him about DSI?

18 A. Not to my knowledge, no.

19 Q. Ever speak to him about any of his TCPA  
20 litigation?

21 A. I'm sure it's come up periodically.  
22 Again, if we have a -- if I have question, if he has  
23 experience with a defendant, we might have talked  
24 about that.

25 Q. Have you spoken to anyone else that I have

1 not mentioned today about this lawsuit?

2 A. No.

3 Q. Who is Diana Mey?

4 A. Diana Mey is a nice lady who lives in West  
5 Virginia.

6 Q. How do you know her?

7 A. I know she's very -- she's also a consumer  
8 advocate and she's filed TPCA cases as well.

9 Q. Do you ever speak to her about this case?

10 A. No.

11 Q. Is she somebody whose cell number you  
12 would have programmed into your cell phone?

13 A. Yes.

14 Q. How often do you speak to Ms. Mey?

15 A. Periodically, every -- maybe a few times a  
16 month.

17 Q. Mr. James Shelton, how do you know him?

18 A. He's a friend in common with Andrew as  
19 well and I've talked to him.

20 Q. What do you talk to him about?

21 A. We talk about traveling. We talk about  
22 business. We talk about the stock market. Just  
23 general guy talk.

24 Q. What business is Mr. Shelton in?

25 A. James Shelton collects judgments.

1 Q. Have you been asked to read it?

2 A. It's on my list to do.

3 Q. But you haven't read it before it was  
4 filed with the court; is that correct?

5 A. I don't think so.

6 Q. Do you have any social media accounts,  
7 sir?

8 A. Yes.

9 Q. Which ones?

10 A. I can't name them all, but whatever  
11 qualifies for social media, but I'm on Facebook  
12 and Instagram.

13 Q. What is your name on Facebook?

14 A. Just Craig Cunningham.

15 Q. Is it a private account or can the public  
16 see it?

17 A. I don't know. I would have to check the  
18 settings, but I believe -- again, I'm not super privy  
19 to all of the current privacy settings too.

20 Q. Are you Facebook friends with Mr. Perrong?

21 A. No. I don't think so.

22 Q. Are you Facebook friends with  
23 Mr. Paronich?

24 A. No.

25 Q. Do you have an Instagram account?

1 A. I do.

2 Q. What is your handle, if you will, or is  
3 that Twitter? I have to get up with the -- what is  
4 your name or handle on Instagram?

5 A. Instagram is Brown Hulk Smash.

6 Q. Can you spell that, please?

7 A. Brown, B-r-o-w-n, Hulk, H-u-l-k, Smash.

8 Q. And is that a private setting?

9 A. Again, I think friends can view me. I'm  
10 not quite sure what you mean by "private setting."  
11 It's a --

12 Q. If I were to pull up Instagram right now  
13 and search, would I be able to find your account, if  
14 you know?

15 A. Yes.

16 Q. Do you have a Twitter handle?

17 A. I think I have an account there, but I  
18 don't really use it much.

19 Q. Do you remember the name?

20 A. No.

21 Q. Do you have a particular account?

22 A. No.

23 Q. Are there any other forms of social media  
24 that I haven't asked about that you are aware of that  
25 you have an account in?

1           A.     Sure. I mean, there's -- I've been on gun  
2 message boards, gaming message boards, many different  
3 ones over the years. Some are active, some I'm not  
4 active on.

5           MR. PARONICH: Jenny, when you get to a  
6 logical breaking point. We've been going about 90,  
7 but I want to let you finish your flow.

8           MS. PERKINS: Of course.

9           Q.     (By Ms. Perkins) Have you posted about  
10 this case anywhere?

11          A.     No.

12          Q.     Do you plan to post about this case  
13 anywhere?

14          A.     No.

15          MS. PERKINS: Okay. Why don't we take a  
16 break?

17          MR. PARONICH: And, Craig, do another ten  
18 minutes?

19          THE WITNESS: That sounds good.

20          MR. PARONICH: Is that good for everyone  
21 else?

22          MS. PERKINS: So why don't we get back  
23 here at 1:30 Central.

24          MR. PARONICH: Perfect.

25          MS. PERKINS: Oh, no, sorry, that's not



1 fair. 1:40 Central.

2 MR. PARONICH: That's what I assumed you  
3 meant, but, yeah.

4 MS. PERKINS: We have offices in every  
5 state, so all day long I'm confusing time zones. All  
6 right. So we'll be back.

7 MR. PARONICH: Yes.

8 THE VIDEOGRAPHER: Going off the record.  
9 The time is approximately 12:29 p.m.

10 (Break)

11 THE VIDEOGRAPHER: Returning on the  
12 record. 12:41 p.m. is the time.

13 Counsel.

14 Q. (By Ms. Perkins) Mr. Cunningham, you're  
15 seeking to serve as a class representative, along  
16 with Mr. Perrong and Mr. Hossfeld, in this case that  
17 we are here to talk about today, correct?

18 A. Yes.

19 Q. What is your understanding of the duties  
20 of a class representative?

21 A. My duties are to represent the class on  
22 their behalf collectively as opposed to my own and  
23 essentially supporting my personal direct interest to  
24 what is best for the class.

25 Q. So you're supposed to at times put the

1 class's interest above your own?

2 A. Correct.

3 Q. Have you ever served as a class  
4 representative before in a TCPA case?

5 A. Yes.

6 Q. What cases were those?

7 A. There have been several. Cunningham  
8 versus -- I'm just going to say Cunningham because  
9 sometimes there are many plaintiffs in the case.

10 Q. Understood.

11 A. But Cunningham vs. DirecTV. There's  
12 Cunningham vs. Lexington Law. Cunningham versus -- I  
13 can't think of the defendant's name. There's another  
14 alarm one. There have been several. Several over  
15 the years, several going at the same time.

16 Q. More than five?

17 A. More than five what?

18 Q. More than five times where you have been  
19 appointed as a class representative?

20 A. Yes.

21 Q. More than ten?

22 A. Yes.

23 Q. More than 20?

24 A. Yes. I believe so.

25 Q. More than 30?

1           A.     I'll say somewhere between 20 and 30.

2           Q.     And in those situations where you were  
3 appointed as a class representative, was that based  
4 on a settlement -- let me rephrase that, sir. When  
5 you were appointed as a class representative, did the  
6 defendant or defendants oppose your appointment as a  
7 class representative?

8           A.     There may have been a few times, like two  
9 or three times, where someone tried to challenge it.  
10 But, no, generally, they did not. That has not been  
11 my experience.

12          Q.     And what were those two times where  
13 somebody tried to challenge it?

14          A.     It was in the form of a motion to  
15 disqualify or dismiss, something along those lines,  
16 that said I'm not -- again, I don't remember the  
17 specifics of the case or arguments made. I just seem  
18 to remember someone was claiming I wasn't an adequate  
19 representative for whatever reason they said.

20          Q.     And did the court or tribunal ever rule on  
21 either the motion or the proffer to disqualify you as  
22 a class representative?

23          A.     I think so, yeah. I don't think I've  
24 never been -- I've never been disqualified as a class  
25 representative in any circumstance or...

1 Q. Have you ever been named a class  
2 representative in a case where the certification of  
3 the class was opposed by the defendant or the  
4 defendants?

5 A. Yes.

6 Q. In what instances were those?

7 A. So these were certifications sought fairly  
8 early in the case and there was a motion to certify  
9 the class and the defendants didn't want to certify  
10 the class.

11 Q. And a court overruled the defendants'  
12 objection to the certification and you became a class  
13 representative?

14 A. So that's -- again, my understanding,  
15 that's not how it works. When I file a case --  
16 excuse me. When I file a case as a class action, I'm  
17 a class representative until and unless I'm  
18 disqualified or we settle the case on an individual  
19 basis or something like that.

20 Q. Have you ever been named a class  
21 representative when the certification of the class  
22 itself was opposed by the defendant or the  
23 defendants?

24 A. Yes.

25 Q. What case was that?

1           A.     Again, I think it was one of Aytan's cases  
2 and, I think, a Lexington Law case. That was a  
3 little confusing because there's several class cases  
4 that went to the -- trying to get to an NBL, and it  
5 was just a big mess, but there was an opposition to  
6 class certification by the defendants.

7           Q.     Did the court ever rule definitively on  
8 the defendants' opposition to the class  
9 certification?

10          A.     I don't think the court ruled on it  
11 definitively. But, again, without looking at  
12 documents, it's a little hard to say and there's  
13 several cases and that was several years ago.

14          Q.     I will tell you that I have done my  
15 research, sir, and I am not aware of any federal case  
16 where a motion to certify a class with you as the  
17 named class representative was ultimately approved by  
18 a court when there was an opposition propounded or  
19 filed by the defendant.

20          A.     Okay.

21          Q.     Do you have anything to refute the  
22 research that I have done?

23          A.     No.

24          Q.     Okay. Have you ever been named a class  
25 representative in a non-TCPA case?

1 A. I don't think so.

2 Q. Have you ever sought to certify a non-TCPA  
3 class?

4 A. No.

5 Q. I believe earlier in your days of filing  
6 complaints you may have filed some complaints under  
7 the Fair Debt Collection Practices Act. Are you  
8 familiar with that term?

9 A. I am.

10 Q. Have you ever served as a class  
11 representative in a Fair Debt Collection Practices  
12 Act claim?

13 A. I don't think so, no.

14 Q. And are you aware of any court ever  
15 holding that you could not adequately serve as a  
16 class representative?

17 A. No.

18 Q. If this case is certified as a class, do  
19 you know what type of relief is available to you?

20 A. There's damages, there's injunctive  
21 relief, costs and fees as well.

22 Q. Does the relief that's available to you at  
23 all differentiate than the relief that's available to  
24 Mr. Perrong?

25 A. I be -- again, I'm not quite sure what

1 you're asking.

2 Q. Are you and Mr. Perrong eligible for the  
3 same type of relief if this case is certified as a  
4 class action?

5 A. My understanding is relief to the class,  
6 not relief to me or Andrew specifically.

7 Q. So you personally are not -- you do not  
8 believe that you personally are entitled to relief if  
9 a class is certified in this case?

10 A. That's not what I'm saying.

11 Q. What are you saying?

12 A. I'm part of a class as an elevated status  
13 as a class representative, but the relief is fairly  
14 apportioned across the class and other than an  
15 incentive award, that's about it. That's for serving  
16 an elevated status as a class representative.

17 Q. What is an incentive award?

18 A. It's an award that courts can grant in  
19 their discretion to a class representative for  
20 advocating on behalf of the class.

21 Q. Is that something that you are seeking in  
22 this case?

23 A. As I understand it, that's something that  
24 happens at a later process, certified and so forth.

25 Q. If the class is certified, do you have an

1 intention to seek an incentive payment as the class  
2 representative?

3 A. Yes.

4 Q. Have you ever received an incentive  
5 payment?

6 A. Yes. In the Lexington Law case, I recall  
7 there was one.

8 Q. Where was that case filed?

9 A. I think it was Utah.

10 Q. How much did you receive as an incentive  
11 payment?

12 A. I want to say it was about \$2500.  
13 Something around that range.

14 Q. Did you receive any other monetary damages  
15 in addition to the incentive payment?

16 A. No.

17 Q. And is that the only time you received an  
18 incentive payment?

19 A. Correct.

20 Q. Have you received any compensation at all  
21 so far in your role in this case?

22 A. No.

23 Q. If this case is certified as a class, what  
24 do you understand your role would be?

25 A. Well, I have to testify. Deposition,



1 obviously. I have to attend court. Produce records,  
2 documents. Respond to discovery. Things like that.

3 Q. How many open cases do you have right now  
4 where you are seeking to serve as a class  
5 representative?

6 A. I can generally say something like ten to  
7 15 cases total right now open, and maybe five class  
8 cases where I'm serving as class rep.

9 Q. And how many cases do you file a month?

10 A. It really depends on the month, what is  
11 going on. Travel.

12 Q. How many cases did you file in May?

13 A. I don't recall. Somewhere around three to  
14 five, maybe.

15 Q. How many cases do you usually file a year?

16 A. Again, it varies as far as travel  
17 schedule, business, other interests and things that  
18 I'm doing.

19 Q. Have you ever served as an appointed class  
20 representative in multiple cases at the same time?

21 A. Yes.

22 Q. What cases were those?

23 A. I mean, I generally have several class  
24 cases going, as well as several individual cases  
25 going at the same time going back for several years,

1 so it's really hard to say. As an example, I'll just  
2 give you a current one. So there's Cunningham vs.  
3 AT&T and there's Cunningham vs. DSI and Vivint. And  
4 there's a CBD one. Those are all class cases. There  
5 is a class rep at the same time.

6 Q. And what is the status of the AT&T case  
7 right now? Where is it along in the proceedings?

8 A. They've amended the Complaint several  
9 times. Had some discovery. Some of the defendants  
10 have been dismissed or defaulted. Just, it's a lot  
11 of case and a lot -- there's a lot of stuff going on  
12 with it. So many, many, several, multiple  
13 plaintiffs, several defendants and new ones are  
14 getting identified and added on it. So it's just a  
15 lot going on.

16 Q. So you're still in class discovery?

17 A. Yes. As I recall, yes.

18 Q. And what is the status of the CBD case you  
19 are referring to?

20 A. The CBD one, they have declared  
21 bankruptcy, one of the corporations, and so that kind  
22 of put everything on pause, whether it's a stay, an  
23 automatic stay, and I believe we're looking to amend  
24 to bring in the -- some of the owners and other  
25 parties.

1 Q. Okay. Now, will your duties to serve as a  
2 class representative in this case at all be impacted  
3 with your duties to serve as a class rep in the other  
4 100-plus cases, or, I'm sorry, the other 15 to  
5 20-plus cases that are active right now?

6 A. No, it doesn't impact my duties at all.

7 Q. How much time of day do you devote to your  
8 TCPA cases?

9 A. It varies with travel and business,  
10 workouts, other things I have going on. I would say,  
11 obviously, today I'm spending a lot, several hours,  
12 other days it's none. So maybe an hour, two hours,  
13 maybe, a day. Generally, weekends are less busy and  
14 during the week it's more.

15 Q. If this case were to be certified and go  
16 to trial, are you able to travel to Utah for the  
17 trial?

18 A. Sure.

19 Q. Are you currently vaccinated?

20 A. I am.

21 Q. Do you have any issues with traveling to  
22 Utah?

23 A. No issues.

24 Q. Have you spoken to any other members of  
25 the class that you are seeking to certify?

1           A.     No. Well, let me be clear. I don't think  
2 we have identified all the class members, but to my  
3 knowledge, no.

4           Q.     What is the class that you are seeking to  
5 certify in this litigation?

6           A.     Well, there's three classes. There's  
7 people who received text messages, people who  
8 received calls, and then there's people who --  
9 basically that -- where they received violations of  
10 the telemarketing regulations, so all of them.

11          Q.     Which telemarketing regulations?

12          A.     Number 47 CFR 64.12.

13          Q.     So there's a telephone call class, there's  
14 a text message class and then there's a --

15          A.     Telemarketing regulations.

16          Q.     -- telemarketing. Okay. And are you  
17 seeking to be appointed as a representative for all  
18 three of those classes?

19          A.     Yes.

20          Q.     Do you know when the close of discovery is  
21 in this case?

22          A.     I'm not sure of the date. It's on the  
23 scheduling order.

24          Q.     And are you planning to seek to certify  
25 all three of these classes in this case?

1 A. Yes.

2 Q. Are any of your co-plaintiffs also seeking  
3 to certify any of the three classes that you just  
4 mentioned?

5 A. I'm sure they are, but you would really  
6 have to ask them.

7 Q. And who would be a member of the three  
8 classes that you are seeking to certify? I  
9 understand that you don't make that determination,  
10 but what are the characteristics of the individuals  
11 that would be a member of the three classes that you  
12 are seeking to certify?

13 MR. PARONICH: Objection. You can answer.

14 THE WITNESS: I think there would be  
15 people who have cell phones who received calls or  
16 text messages or had their rights violated otherwise  
17 by -- had their rights under the telemarketing  
18 regulations violated in other fashions.

19 Q. (By Ms. Perkins) And received calls from  
20 whom?

21 A. Vivint, DSI, or any of their other  
22 representatives, marketers, or agents.

23 Q. So it's when Vivint made the call or text  
24 message. Would you agree with me?

25 A. Can you give me a complete sentence?

1           A.     That's talking about the number of  
2 sign-ups, but I think --

3           Q.     Three to five, okay.

4           A.     Three to five, yes.

5           Q.     What was the purpose of the Vivint persons  
6 coming to your home?

7           A.     They wanted to do the install.

8           Q.     Did you ever permit Vivint to do an  
9 install?

10          A.     Yeah, I've never had it installed.

11          Q.     So you never permitted them to do an  
12 install?

13          A.     Correct.

14          Q.     So did you cancel the install when they  
15 arrived?

16          A.     Either that or before.

17          Q.     Have you ever had an incident where you  
18 canceled an install but they still showed up?

19          A.     I believe that's happened several times,  
20 yes.

21          Q.     And how do you typically cancel the  
22 installs?

23          A.     I just call the 800 number.

24          Q.     Do you have that number programmed into  
25 your phone?

1 A. No.

2 Q. When was the first time you heard of  
3 Vivint?

4 A. When I started getting the calls about  
5 Vivint alarm systems.

6 Q. You didn't hear about them beforehand?

7 A. No.

8 Q. Ever see their trucks in your various  
9 neighborhoods?

10 A. I'm sure I have.

11 Q. Ever been on their website?

12 A. Again, briefly, to identify the calls so I  
13 could look at the number to reach somebody.

14 Q. Do you have any family members or friends  
15 who have ever obtained security systems from Vivint?

16 A. I'm sure several of my friends have. I  
17 have not discussed it with them.

18 Q. And the services that you have signed up  
19 for in the past with Vivint, what were they?

20 A. An alarm system.

21 Q. Just a generic alarm system? Was there  
22 anything else?

23 A. I think it had cameras as an option on  
24 some of them.

25 Q. Did you ever sign up for a camera?

1           A.     I may have. I don't really remember the  
2 details of every sign-up, all the packages.

3           Q.     When you signed up for these services, how  
4 did you do that?

5           A.     I received a phone call. They asked if I  
6 then wanted Vivint services. I said yes. I gave  
7 them a credit card and they sent me the, you know,  
8 sign-up information later with the account number.

9           Q.     And you called Vivint to sign up as  
10 opposed to Vivint calling you to sign up?

11          A.     Incorrect. Vivint called me or agents  
12 thereof.

13          Q.     Did you sign up when Vivint or Vivint  
14 agents called you or did you independently call  
15 Vivint and sign up?

16          A.     I signed up when Vivint's agents called  
17 me.

18          Q.     Do you fill out an application?

19          A.     Not really. They asked some questions and  
20 I gave them my information.

21          Q.     What questions did they ask?

22          A.     The address, the type of system. They  
23 went over the pricing and so forth during the call.

24          Q.     Did you give them your phone number?

25          A.     Did I what?



1 Q. Did you give them your phone number?

2 A. No. They already had my phone number.

3 Q. Did they ask you if they could call you on  
4 that phone number?

5 A. They may have.

6 Q. Did you record those calls?

7 A. Yes.

8 Q. Did you ever tell anyone at Vivint that  
9 you didn't want them to call you?

10 A. Oh, yes. I made that abundantly clear.

11 Q. How did you make that abundantly clear?

12 A. I talked to Rich Goates, who, at the time,  
13 was in-house counsel for Vivint. He called me on my  
14 [REDACTED] phone number.

15 Q. Okay.

16 A. It was on many of the emails that we  
17 discussed. And we exchanged phone records and all of  
18 that. So he knew that I -- what my number was. Rich  
19 Goates knew I did not want to receive calls at that  
20 number. And, again, we discussed that point several  
21 times over several series of calls.

22 Q. And at the point that you signed up for  
23 Vivint services, were you speaking with Vivint  
24 individuals?

25 A. Or someone with DSI agents.

1 Q. Do you know anyone who works for Vivint  
2 currently?

3 A. No.

4 Q. Do you know anyone who works for DSI  
5 currently?

6 A. No.

7 Q. So the 64 or so calls and/or text messages  
8 that you received in this lawsuit, those were all  
9 made to the phone number [REDACTED]

10 A. Correct.

11 Q. So that's the only phone number at issue  
12 in this lawsuit for Mr. Cunningham?

13 A. Yes.

14 Q. When did you start using the [REDACTED] phone  
15 number?

16 A. At least five years ago.

17 Q. Are you currently using it?

18 A. I do.

19 Q. Do you have it with you today?

20 A. It's in the house.

21 Q. And is it ported to a cell phone?

22 A. It's not ported to a cell number. I would  
23 not describe it as that. It is a cell phone.

24 Q. So if I call that number right now, a cell  
25 phone would ring that's in your house?

1 A. Correct.

2 Q. And would it ring if it didn't recognize  
3 my phone number?

4 A. Would it ring?

5 Q. Yes.

6 A. Yes, it would ring.

7 Q. Would it record a message that I left for  
8 you if you didn't answer it?

9 A. No. No recording. That message would go  
10 to voicemail and if it is not full, you can leave a  
11 message on my voicemail.

12 Q. If you picked up that call from -- I have  
13 a 954 area code. If you picked up that call and  
14 didn't recognize it if it wasn't -- you and I have  
15 never met before, so I assume you don't have my cell  
16 phone number in your phone, would it automatically  
17 record our conversation?

18 A. Yes, it would.

19 Q. And what kind of cell phone do you have  
20 for the [REDACTED] phone number?

21 A. The cell phone is a Pixel 3. Google Pixel  
22 3.

23 Q. How long have you had that phone?

24 A. This one is a little bit new. Actually,  
25 it's a Pixel 4.

1 Q. Pixel 4, okay.

2 A. Yeah. So I got that specific device in  
3 March, I think. So fairly -- not too long ago.

4 Q. And did you get the device through  
5 Republic Wireless or did you get it elsewhere?

6 A. No. Verizon.

7 Q. Verizon?

8 A. Yes.

9 Q. Are there any other phone numbers that I  
10 could call you that would cause your Pixel 4 Google  
11 phone number to ring?

12 A. I don't think so.

13 Q. Was there ever a time that I could call  
14 another phone number besides the [REDACTED] phone number  
15 that would cause your Pixel 4 Google to ring?

16 A. Anecdotally, there may have been some  
17 other numbers forwarded to the [REDACTED] number without my  
18 knowledge or consent or control over that. Some  
19 defendants, for example, said they dialed a different  
20 number, not [REDACTED], but somehow that number rang, so  
21 that's what they said.

22 Q. In this case?

23 A. Not in this case.

24 Q. Okay. So it's your understanding -- are  
25 you aware of a situation where somebody calls the

1     ■■■■ -- or somebody calls a different phone number  
2     and the ■■■■ phone number rings?

3           A.     I can only tell you what people have told  
4     me.

5           Q.     Okay.

6           A.     I don't know what they dialed. I didn't  
7     dial it. I'm just saying what they told me. That's  
8     what they said.

9           Q.     Do you have any call forwarding set up on  
10    your ■■■■ phone number?

11          A.     No. If I dial ■■■■, it's going to ring to  
12    ■■■■, yeah. I'm associated with ■■■■.

13          Q.     Are there any phone numbers that forward  
14    calls to your -- any other phone numbers besides the  
15    ■■■■ phone number that forwards calls to your ■■■■  
16    number?

17          A.     That's what I'm saying. People have said  
18    that it exists and that they called a different  
19    number and it forwarded to the ■■■■ number. I'm not  
20    calling them liars. I just -- that's what they said  
21    and that's what I'm telling you what they said.

22          Q.     Have you ever witnessed such an  
23    occurrence?

24          A.     Maybe once. I think I tried on my own  
25    maybe once.

1 Q. And what happened?

2 A. It didn't ring the [REDACTED] number, but I  
3 didn't recognize the number that was being dialed. I  
4 just repeated the process they said they did to see  
5 if it is possible.

6 Q. Did you recognize the number that you were  
7 dialing that ultimately rang to [REDACTED]?

8 A. No. Like I was saying, that wasn't my  
9 number. I was just checking the feasibility if this  
10 makes sense or not make sense. Is it possible or not  
11 possible.

12 Q. And it did happen before your very eyes?

13 A. Yes.

14 Q. Did you ever look into why that happened,  
15 ever ask Republic or anyone else?

16 A. So, not to my knowledge, it was not a  
17 public number, so I didn't really know who to ask.  
18 It wasn't my number. And I really wasn't even sure  
19 who the service provider was or how or why this was  
20 happening, so I don't have an answer to that  
21 question. It's not my number. That's all I can tell  
22 you.

23 Q. You just never inquired other than seeing  
24 it for yourself?

25 A. Correct.

1 A. Yes.

2 Q. Okay. Meredith, can you please show  
3 Mr. Cunningham Exhibit 2? I'm going to put this in  
4 the chat function. Mr. Cunningham, let me know when  
5 you are able to view them.

6 A. Yeah. Go ahead.

7 (CUNNINGHAM EXHIBIT 2 WAS MARKED.)

8 Q. (By Ms. Perkins) What I'm showing you has  
9 been marked CUNNINGHAM 001 to 008. I'm sorry.  
10 There's six zeros -- five zeros -- one, two -- five  
11 zeros slash eight. If you can scroll through these  
12 documents, let me know if you recognize them.

13 A. I do.

14 Q. What are we looking at?

15 A. These are phone bills from Republic  
16 Wireless.

17 Q. Where are they from?

18 A. Republic Wireless.

19 Q. Who acquired them for this litigation?

20 A. I did.

21 Q. How did you get them?

22 A. I either had them or logged into the  
23 account and downloaded them.

24 Q. So if you turn to the first page, we have  
25 a monthly service for February 11, 2019. Does that

1 -- the \$64 figure, does that equate to what your  
2 monthly bill was?

3 A. As far as I know, yes.

4 Q. My Choice Talk & Text, you paid \$15 a  
5 month for that, I see. Did you have unlimited talk  
6 and text with this plan?

7 A. Yes.

8 Q. What is Republic Refund?

9 A. It's a program they have, I think. It's a  
10 program that Republic Wireless has and it's related  
11 to data usage per month. So if you come under a  
12 certain amount of megabits, gigabytes, whatever, then  
13 they give you a small portion back. That's how I  
14 understand it works.

15 Q. In February 2019, we're seeing a bill for  
16 the [REDACTED] phone number. Underneath that it seems to  
17 -- do you know what a Moto G5 Plus is?

18 A. Yes. It's a Motorola phone.

19 Q. Is that the phone that would ring when the  
20 [REDACTED] number was called in February of 2019?

21 A. Yes. That is the device that is  
22 associated with the phone.

23 Q. Do you still have that Motorola phone?

24 A. I do.

25 Q. Are you currently using it for any other



1 phone numbers?

2 A. No.

3 Q. If you turn to the third page.

4 A. Yeah.

5 Q. We have a July 2019 bill, also for the  
6 [REDACTED] phone?

7 A. Yes.

8 Q. Any idea why this statement has credit  
9 card information on it and the one we looked at  
10 previously did not?

11 A. No idea.

12 Q. Do you recognize the credit card that ends  
13 in 7418?

14 A. It vaguely seems like my family credit  
15 card I've had in the past.

16 Q. Do you currently have that credit card?

17 A. Maybe, but I think the number has changed.  
18 It expired or got hacked or something.

19 Q. Well, it says the expiration date was  
20 February of 2024.

21 A. Correct.

22 Q. So we're in 2021.

23 A. Correct.

24 Q. So you think that card number expired?

25 A. Or, as I said, it got compromised, one way

1 or another, and they sent me a new card.

2 Q. Do you know what bank or credit card  
3 company this credit card was with?

4 A. No. I can't tell you offhand.

5 Q. Were you the account holder for this  
6 credit card?

7 A. I was, yes.

8 Q. If you go to the fifth page of the  
9 documents.

10 A. Okay.

11 Q. We have a September 11, 2019 bill. This  
12 time we have an additional phone number,

13 [REDACTED]. Do you recognize that phone number,  
14 sir?

15 A. Yes.

16 Q. And why is that [REDACTED] phone number  
17 appearing on a September 11, 2019 bill from Republic  
18 for the [REDACTED] phone number?

19 A. So they just included -- include all the  
20 phone numbers that are associated with that account  
21 and the email address with the bills.

22 Q. So would it be fair to assume that if we  
23 scrolled back up to the February 2019 statement in  
24 February of 2019, you only had one cell phone number  
25 associated with Republic?

1           A.     No. There's another email address I had  
2     that had one or two other phone numbers associated  
3     with it.

4           Q.     And what are those email addresses?

5           A.     I think it was  
6     graniteenterprisesllc@gmail.com.

7           Q.     And what are the other phone numbers?

8           A.     [REDACTED] are the other  
9     two numbers, but, you know, at this time, I think I  
10    had transitioned those two numbers to Verizon and  
11    that's why, yeah.

12          Q.     Who uses these phone numbers?

13          A.     I do.

14          Q.     And for the phone numbers that have the --  
15    that are associated with the Granite Enterprises  
16    email address, do you use those phone numbers?

17          A.     Yes.

18          Q.     Why are they associated with the Granite  
19    email address?

20          A.     I don't remember. I think I got those  
21    later. Yeah, I think I got those later, so I had to  
22    -- so say I had the [REDACTED] five years ago, and I  
23    transitioned the other numbers to cell phones four  
24    years ago.

25          Q.     Okay. And does Granite pay for any of

1 these cell phone numbers?

2 A. No.

3 Q. So switching back to the fifth page with  
4 the [REDACTED] number, is that a number that you currently  
5 have?

6 A. Which one?

7 Q. The fifth page. It's area code [REDACTED] --

8 A. Okay.

9 Q. -- [REDACTED].

10 A. Yeah. What about it?

11 Q. Is that a phone number that you have?

12 A. Not currently, no.

13 Q. What are the dates that you had that phone  
14 number?

15 A. I don't recall the dates. The only --  
16 yeah, I'm not sure of the dates.

17 Q. What did you use that phone number for?

18 A. There was a phone I needed to get some  
19 data or apps or files or something off of, and it was  
20 just not working. It was connected to "send." So I  
21 had to get service so I could get the files I wanted  
22 off of it.

23 Q. So there were files on a phone and you  
24 were not able to access them without getting a phone  
25 number --

1 A. Correct.

2 Q. -- associated with the phone?

3 A. Correct.

4 Q. What were those files?

5 A. I think they were called -- might have  
6 been screenshots of calls or something like that.

7 Q. For other TCPA cases?

8 A. Yes.

9 Q. Do you recognize the "Moto E (Black) (1st  
10 Generation)" phone?

11 A. Yes.

12 Q. Do you currently have that phone?

13 A. I do.

14 Q. Is it currently being used?

15 A. No. That's an older -- that's an older  
16 phone, so I retired that one from use.

17 Q. And it looks like in this month, the  
18 credit card that was used to pay for this ended in  
19 4880 with the expiration of June 2022. Do you  
20 recognize that credit card?

21 A. Yes.

22 Q. What credit card is that?

23 A. It's just a credit card. I know the 4800  
24 sounds familiar.

25 Q. You don't know which credit card that is?

1 A. Not offhand, no.

2 Q. How many credit cards do you currently  
3 have?

4 A. I have a few. I've got at least five,  
5 plus a -- yeah, probably five plus.

6 Q. Does Granite Enterprises have any credit  
7 cards?

8 A. I think I have one credit card for -- in  
9 the name of Enterprises.

10 Q. Which credit card is that?

11 A. American Express.

12 Q. Is that a business card?

13 A. Yes.

14 Q. You can put that to the side.

15 Meredith, if you can please open up what  
16 has been premarked as Exhibit 3.

17 THE WITNESS: While she's getting that up,  
18 could we take, like, a five-minute break?

19 MS. PERKINS: Sure thing.

20 MR. PARONICH: And I just know we're  
21 around what will be 5:00 on the East Coast. I'll  
22 just need a bit of a longer break, like 5:15 now,  
23 because I don't want to shortchange you on the next  
24 round. I'll just need like 30 minutes, around that.

25 MS. PERKINS: Right now or closer to 5:00?

1 MR. PARONICH: At 5:15, I'll need 30  
2 minutes.

3 MS. PERKINS: So would you like to take a  
4 five-minute break now, Mr. Cunningham?

5 MR. PARONICH: Yes, please.

6 THE VIDEOGRAPHER: Going off the record.  
7 1:55 is the time.

8 (Break)

9 THE VIDEOGRAPHER: Returning on the  
10 record. The time is approximately 2:03 p.m.  
11 Counsel.

12 (CUNNINGHAM EXHIBIT 3 WAS MARKED.)

13 Q. (By Ms. Perkins) Mr. Cunningham, if you  
14 could please look in the chat box, Meredith has  
15 uploaded what has been premarked as CUNNINGHAM 3.

16 A. Yes.

17 Q. Are you looking at that document, sir?

18 A. I am.

19 Q. Have you ever seen that document before?

20 A. Yes.

21 Q. What am I looking at?

22 A. These are call detail records from  
23 Republic Wireless reflecting some of the  
24 telemarketing calls I received by or on behalf of  
25 DSI, or, I'm sorry, by or on behalf of Vivint.

1 Q. When did you receive this document?

2 A. As I recall, summer 2019.

3 Q. And this is a subpoena response --

4 A. Yes.

5 Q. -- is that -- okay. So did you serve a  
6 subpoena on Republic Wireless in the summer of 2019?

7 A. I did.

8 Q. Has that subpoena been produced in this  
9 litigation?

10 A. No.

11 Q. And did you serve the subpoena before you  
12 were a party in this litigation?

13 A. I'm not sure of when I served it other --  
14 other than to say it was not related to this case. I  
15 just got information that is partially related to  
16 this case through the --

17 Q. And do you have a copy of that subpoena?

18 A. I don't think so.

19 Q. So apart from you telling me that you  
20 subpoenaed this record, do you have any other  
21 documentary evidence of where this document came  
22 from?

23 A. There's a certificate or the -- from the  
24 facility of the records, there is an affidavit where  
25 they authenticate these records.



1 Q. And where is that custodian of records  
2 affidavit?

3 A. I thought we produced it. If we didn't,  
4 I'm sure it's something that I can get.

5 Q. Yeah. We'll ask for that and a copy of  
6 the subpoena. It also has -- it also lists 505  
7 pages. Did you receive all 505 pages?

8 A. Yes.

9 Q. And why were they not produced in this  
10 litigation?

11 A. Because it's outside of the scope of the  
12 relevancy and it's simply about all calls. Those are  
13 all calls that were inbound and outbound for the  
14 Republic Wireless account for that time frame.

15 Q. And who determined that it was outside of  
16 the scope of this case?

17 A. I did.

18 Q. Okay. And what has been blacked out?

19 A. These are other calls that are unrelated  
20 to calls by or on behalf of Vivint.

21 Q. Did you black out these other calls?

22 A. Yes.

23 Q. So you have the original document without  
24 the black outs that was produced to you?

25 A. I do have unredacted documents, yes.

1 A. That's the primary source of revenue, yes.

2 Q. What is the other source of revenue?

3 A. There might be some interest and payments  
4 like that.

5 Q. Interest in what?

6 A. So banks pay interest, stocks pay  
7 dividends, bonds pay coupons. There's other ways of  
8 generating income other than selling stock.

9 Q. Does Granite Enterprises hold stock?

10 A. I know I have a brokerage account in its  
11 name. I don't think I trade through that right now.

12 Q. Does it currently hold stock?

13 A. Again, I've really got to get all my 1099s  
14 and all of that stuff together, see what all the  
15 sources of income are. But I'm just saying I  
16 wouldn't rule out getting some interest payments from  
17 the bank or other financial institutions.

18 Q. Apart from making income on interest and  
19 potentially dividend payments or other stocks, does  
20 Granite Enterprises make any other income from  
21 consumer sources besides the Amazon eCommerce  
22 platform?

23 A. What is a consumer source?

24 Q. An individual or an entity purchasing  
25 services or products from Granite Enterprises.

1 A. No. That's it, primarily Amazon.

2 Q. What is your top-selling product through  
3 Granite Enterprises?

4 A. It really depends. Products vary, such  
5 when the industry is very -- it's quite varied.  
6 Companies and consumer taste change all the time.

7 Q. What was it last month?

8 A. I don't recall last month.

9 Q. Can you name me five things that Granite  
10 Enterprises sells to consumers on Amazon?

11 A. Sure. Protein powder for workouts. Most  
12 of your major supplement brands, I've sold stuff to  
13 them, or sold their products over the years. But  
14 certain things work out well and certain things don't  
15 move so fast.

16 Q. Again, under what trade name or business  
17 name are the products being sold under?

18 A. It's not really how it's done.

19 Q. How is it done, Mr. Cunningham?

20 A. So I buy products, such as VPX Bang, and  
21 they get listed on Amazon. If you want to buy a  
22 12-pack of VPX Bang, go on Amazon. Pull up whatever  
23 flavor you want and it may be selling it or it may be  
24 somebody else selling it. It could be Amazon or any  
25 other third-party seller. And you order one and they

1 ship it to you and they charge your credit card and I  
2 get the portion minus Amazon's fees.

3 Q. And where do you store the products?

4 A. We store it at Amazon.

5 Q. Do you pay Amazon to store the products?

6 A. Yes, as part of the program process,  
7 basically.

8 Q. How much money do you pay Amazon monthly?

9 A. Again, it's not really how it's done. You  
10 pay a percentage, which is about 30 percent of the  
11 gross, and that covers all the fees and costs and  
12 whatever.

13 Q. What was your gross last month for your  
14 Amazon sales?

15 A. I haven't looked.

16 Q. You haven't looked?

17 A. No.

18 Q. When is the last time you reviewed the  
19 gross of your sales at Amazon?

20 A. Per month or -- I usually look at it on a  
21 daily basis, I look at it.

22 Q. When is the last time you looked?

23 A. It's been a few months.

24 Q. Does anyone else look at those numbers for  
25 you and report them to you?

1 A. No.

2 Q. How do you know if your business is doing  
3 well or not doing well if you don't look at your  
4 sales?

5 A. It's not -- I look at it more as  
6 inventory. Is inventory moving, what products I need  
7 to sell, what products I need to get, if there is  
8 something new, specials they have, things like that.  
9 I'm more focused on the operation of it.

10 Q. Do you have a business manager that  
11 reviews how the company is doing?

12 A. I review how the company is doing.

13 Q. Okay. And the last time you reviewed how  
14 the company was doing was a couple of months ago?

15 A. That's not what I said. What I'm saying  
16 is I don't look at it the way you're describing it.  
17 That's not how I look at it and think about it. I  
18 look at what products are selling, what's not  
19 selling, new products, things like that. Some of  
20 them are closeouts and discounts. Should I buy this,  
21 should I not buy this? I know the stuff is pretty  
22 much going to sell, and beyond that, I settle up with  
23 the IRS at the end of the year.

24 Q. Did you pay taxes in 2019?

25 A. Yes.

1 Q. And did you file taxes in 2019?

2 A. I would have to look. I can't remember  
3 the last year I filed, if it was 2019.

4 Q. Okay. Where would you look to determine  
5 if you filed taxes in 2019?

6 A. I would have to check with the IRS.

7 Q. And you don't know that, sitting here  
8 right now, whether you filed taxes in 2019?

9 A. Like I said, I'm a little bit behind on  
10 it, but I'll get caught back up shortly. I had  
11 another issue I had to deal with the IRS on.

12 Q. And what is the reason for being behind in  
13 your taxes?

14 A. I had another issue I had to deal with the  
15 IRS on where they were saying I owed money and I  
16 didn't owe them money and I had to get their  
17 attention -- their attention on that issue.

18 Q. Did that issue have anything to do with  
19 the TCPA settlement payments that you received?

20 A. No.

21 Q. And how do you report those TCPA  
22 settlement payments?

23 A. They would be reported as income.

24 Q. And how much money did you make in income  
25 in 2020 from TCPA settlement payments?

1           A.     I don't know. Like I said, I haven't done

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12           Q.     Yeah, those are details. On Amazon, when  
13 I go on Amazon and look at Granite Enterprise, does  
14 the display name "Best Sups For You" mean anything to  
15 you?

16           A.     Yes. That is a display name.

17           Q.     And is that your Granite Enterprises?

18           A.     Yes.

19           MS. PERKINS: Meredith, can you please  
20 show Mr. Cunningham -- bear with me -- number 19?

21           Q.     (By Ms. Perkins) Mr. Cunningham, what I'm  
22 showing you has been produced by you, double --  
23 sorry, quadruple zero 66. It is an "Account  
24 Information - Citi Online." Do you recognize that?

25           A.     Yes.

1 (EXHIBIT 12 WAS MARKED.)

2 Q. (By Ms. Perkins) What am I looking at?

3 A. It's a credit card statement showing a  
4 transaction involving Vivint.

5 Q. So in or around October 5th of 2020, you  
6 signed up for Vivint services?

7 A. Yes.

8 Q. And I think I have learned this today, but  
9 every time you receive a telemarketing call, you sign  
10 up for services as if they are available in order to  
11 determine who's actually selling or promoting the  
12 product?

13 A. That's not what I said.

14 Q. Okay. Why did you sign up for Vivint  
15 services on October 5th of 2020?

16 A. I signed up on October 5th because I  
17 received what I thought was a call from Vivint that  
18 violated the TCPA and to confirm who was calling, and  
19 it was -- and to confirm it was actually Vivint, I  
20 signed up for services.

21 MS. PERKINS: Meredith, can you please  
22 show Mr. Fitzhenry Number 20? I'm sorry. I called  
23 you Mr. Fitzhenry. I apology.

24 And I would like to mark this one as  
25 Exhibit 13.



1 (EXHIBIT 13 WAS MARKED.)

2 Q. (By Ms. Perkins) Mr. Cunningham, do you  
3 recognize the document that is entitled, "Settlement  
4 and Release Agreement"?

5 A. Yes.

6 Q. And what is this document that we are  
7 looking at?

8 A. It's a settlement involving myself,  
9 Vivint, DSI and Trips Marketing.

10 Q. And this was in relation to telemarketing  
11 calls or text messages that you received?

12 A. Correct.

13 Q. Was there a lawsuit ever filed in regards  
14 to these claims?

15 A. No.

16 Q. And did you negotiate on your behalf for  
17 the settlement?

18 A. Yes.

19 Q. Who did you discuss -- who did you  
20 negotiate with to come to this settlement?

21 A. Rich Goates and I may have talked with  
22 someone at DSI or someone, but definitely Rich  
23 Goates. He was the main point of contact.

24 Q. And how many calls did you receive or text  
25 messages that were the subject of this release?

1           A.     I don't recall the exact number. It was  
2 north of 60, as I recall.

3           Q.     North of 60, six zero?

4           A.     Six zero, yes.

5           Q.     What phone number or phone numbers  
6 received this call, these calls?

7           [REDACTED]

8           [REDACTED]

9           [REDACTED]

10          Q.     And by signing this Settlement Agreement,  
11 what were you releasing?

12          A.     My claims up to the day of the signature.

13          Q.     And what claims were those?

14          A.     Claims related to violations of TCPA.

15                 MS. PERKINS: Meredith, you can put that  
16 to the side. Please show Mr. Cunningham number 21.

17                 THE WITNESS: Okay.

18                 (EXHIBIT 14 WAS MARKED.)

19          Q.     (By Ms. Perkins) Mr. Cunningham, this was  
20 produced in this litigation, CUNNINGHAM 4078. Have  
21 you seen this document before?

22          A.     Yes.

23          Q.     And what is this document?

24          A.     It looks like a summary of phone calls  
25 involving Vivint.

1 Q. And when you previously looked at your  
2 [REDACTED] phone to confirm whether or not the calls or  
3 text messages in this litigation -- I'm sorry --  
4 your [REDACTED] phone number -- phone to determine whether  
5 there were any text messages or calls to that number  
6 in this litigation, you said that you looked at some  
7 notes. If you look at column H, are those the type  
8 of notes that you just looked at?

9 A. No, I don't think so. I think those are  
10 just notes I made based on the call.

11 Q. And did you make these notes?

12 A. Yes.

13 Q. And did you create this spreadsheet?

14 A. Yes.

15 Q. Did you make this -- do you make these  
16 notes contemporaneous to the receipt of a telephone  
17 call or text message, or do you wait until you bring  
18 litigation?

19 A. So it's not a set process. I mean, I made  
20 notes and, as I recall, for this, making this  
21 spreadsheet, I listened to the calls and typed in any  
22 particular notes that I thought were relevant or  
23 important to highlight.

24 Q. Looking at this first, February 25, 2019  
25 date and time, there is a summary of the call. Do